

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

**COMMENTS OF THE CITY OF PALO ALTO
ON BEHALF OF THE JOINT POWERS**

The City of Palo Alto ("Palo Alto"), on behalf of the Joint Powers,¹ files these comments in support of the comments of the National Association of Telecommunications Officers and Advisors ("NATOA"). Palo Alto believes that local government in its capacity as local franchising authority can issue an appropriate local franchise to any facilities-based new entrant to the multichannel video programming distribution marketplace on a timely basis, just as it has timely issued a franchise to the current cable service provider in the Joint Powers' service territory, consistent with the federal (and the Federal Communications Commission's [the "FCC"]) goals of enhanced cable competition and accelerated broadband deployment. Palo Alto herewith provides this brief comment on its multichannel video programming franchise activities on behalf of the Joint Powers and itself.

The Joint Powers' Cable Franchise

Introduction

The Joint Powers' service territory encompasses a population in excess of 128,000. Comcast Cable Communications, Inc. ("Comcast") is the current franchisee under a ten-year nonexclusive franchise agreement, entitled "Cable Television Franchise Agreement By and Between the City of Palo Alto, California, on Behalf of the Joint Powers and TCI Cablevision of California, Inc.", that Palo Alto and Comcast (collectively, the "Parties") entered into as of July 24, 2000 (the "Franchise").² Under a Joint Operating Agreement, Palo Alto, on behalf of the

¹ The City of Palo Alto is a party to a Joint Exercise of Powers Agreement, dated as of July 26, 1983, and a Joint Operating Agreement, dated as of October 13, 1983, by and between the Cities of Palo Alto, East Palo Alto and Menlo Park, the Town of Atherton, and the Counties of San Mateo and Santa Clara (collectively, "Joint Powers" or "JPA").

² The City of Menlo Park has fostered cable competition within its jurisdictional limits; its residents are served by either Comcast or Matrix Cablevision, Inc. On August 14, 1999, the

Joint Powers, was appointed to administer the cable franchise process and has been so engaged since the mid-'80s.

The 2000 Franchise

After five months of negotiations, the Parties³ signed the Franchise. The term commenced on July 24, 2000 and will expire on July 24, 2010. Prior to the execution of the Franchise, on May 22, 2000, Palo Alto adopted Ordinance Number 4636, which amended Chapter 2.10 of the Palo Alto Municipal Code, applicable to the award of cable franchises. Appendix A to Chapter 2.10 embraces the customer service standards applicable to cable franchisees. In 2000, Comcast's predecessors in interest, AT&T Broadband L.L.C. and TCI Cablevision of California, Inc., participated in the review of the ordinance with Palo Alto's staff before it was adopted. The key elements of the Franchise are briefly described below.

The Franchise unequivocally states that Comcast's franchise is non-exclusive and Palo Alto may issue other franchises either on behalf of itself with respect to residents within the jurisdictional limits of the city of Palo Alto or on behalf of the Joint Powers with respect to the service territory.⁴ Under the Franchise, Comcast received the assurances that any other franchise would require that franchisee " . . . to (1) set aside at least the same amount of PEG access channel capacity on its system as TCI is required to provide . . . , (2) make a per-subscriber annual PEG grant payment no less than the amount that TCI is required to make . . . , (3) provide institutional network facilities and support (or cash equivalent) comparable to that which TCI is required to provide . . . , and (4) pay a franchise fee at least equal, in terms of the percentage of Gross Revenues and the Gross Revenues on which the fee is paid, to that which TCI is required to pay"

1. PEG Access Channel Capacity. Comcast is required to provide capacity for public, educational, and governmental ("PEG") access channels on the cable system. There are currently two channels (or capacity) devoted to public access, two channels (or capacity) devoted to educational access, and two channels (or capacity) devoted to government access. Additional

Menlo Park city council adopted Resolution No. 5123, approving the negotiation of the "Cable Television Franchise Agreement between the City of Menlo Park, California, a municipal corporation, and Matrix Cablevision, Inc., a California corporation", dated as of October 12, 1999.

³ While references herein are made to Comcast, these Comments could apply to any person who applies for and obtains a cable franchise from the Joint Powers.

⁴ In 2000, Palo Alto attempted to finalize negotiations of a cable franchise on behalf of its jurisdictional residents with RCN Telecom Services, Inc., a Pennsylvania corporation and a subsidiary of RCN Corporation, a Delaware corporation. After extensive negotiations lasting almost one year, RCN suspended its application in early 2001. A Wall Street Journal article, dated December 15, 2000, hinted that RCN's suspension of its roll-out in various markets of California could be due in part to a desire to conserve cash. *See also* Section 2.10.020 of the Palo Alto Municipal Code, pertaining to the nonexclusive nature of the cable franchise.

PEG channels must be made available (up to a maximum of 10 analog channels or 20 digital channels) if PEG programming grows sufficiently.

2. PEG Support. Comcast is required to financially support the PEG channels in the amount of \$0.88 per subscriber per month for PEG access facilities and equipment. As well, Comcast is required to promote and maintain the public's awareness of PEG access resources and services by (a) including the placement of program schedule information for each PEG access channel in its print and electronic program guides provided to subscribers, in the same manner as the program schedule information for the other non-PEG channels, and (a) locating the PEG access channels on the basic service tier in close proximity to one another, with the public and government channels located at or below channel number 33 and the educational channels at or below channel number 78.

3. I-Net. Comcast is subject to institutional network ("I-Net") requirements. It must construct, maintain and equip an I-Net to provide two-way activation (ability to send and receive signals) at five hub locations. The I-Net has six optical fibers connecting 70 public facilities to these hub sites. These I-Net facilities link the public schools, libraries, public buildings and community centers within the Joint Powers' service territory with the capability of providing the triple play services (voice, video and data communications).

4. Franchise Fee. Comcast must pay a franchise fee to Palo Alto in the amount of five percent of Comcast's gross revenues, in accordance with applicable federal law.

Other key elements of the Franchise are outlined below.

5. System Upgrades. Palo Alto has endeavored to ensure that the Franchise's residents have access to current state-of-the-art telecommunications technologies by including rebuild or upgrade requirements in the Franchise. Comcast was required to rebuild or upgrade the cable system within 36 months of the effective date of the Franchise, or by July 24, 2003. The upgraded system was required to be two-way activated so that cable modem service could be provided to all residents within the service territory. Another requirement is the provision of cable service to all residential areas within the service territory, including areas in which service was not previously provided.

6. Customer Service Standards. The customer service standards impose obligations to ensure that any cable operator is treating its customers in accordance with federal standards and the terms of the Franchise. Some of these obligations include, among others, (a) the maintenance of a local office open for walk-in traffic, (b) telephone answering time standards, (c) installation and service call standards, (d) customer notification requirements, (e) standards applicable to service interruptions, (f) billing statement requirements, and (g) customer complaint procedures.

7. Emergency Alert System. Emergency alerts are addressed in the Franchise. Comcast must provide an emergency alert system ("EAS") in conformance with FCC regulations. The EAS must be capable of allowing local agency officials, via remote activation by telephone, to override the audio and video signals on EAS without the need for assistance from Comcast for

the carriage of emergency alerts. These requirements afford local agencies an important avenue of communication with their residents in the event of an emergency.

8. Enforcement of Franchise Obligations. The Franchise enumerates enforcement mechanisms by which Palo Alto may ensure that Comcast is faithfully providing cable service. These include provisions on auditing, records inspection, monitoring of performance, and procedures for notification and resolution of alleged violations. In employing these enforcement mechanisms to protect the needs and interests of the cable franchise community, Palo Alto has identified several alleged franchise agreement and customer service standards violations that required Comcast's action in mitigation and/or payment of damages. With respect to the payment of damages, Comcast has paid (a) in 2000 and 2001, \$80,500, to settle customer service standards compliance issues, (b) in 2003, \$8,000, to cure customer service standards violations, (c) in 2004, \$1,250, to cure customer service standards violations as well as enter into a settlement valued at \$975,000, to resolve other franchise compliance claims, and (d) in 2005, \$1,250, to cure customer service standards violations.⁵

Other Cable Franchising Opportunities

Palo Alto already has noted that the Joint Powers and at least one member of the Joint Powers (other than Palo Alto) have negotiated separate cable franchises with different entities.⁶ Implicit in the award of these franchises is the desire of the Joint Powers agencies, jointly and individually, to ensure that advanced broadband systems are deployed in their communities in order that their communities may successfully address the technological challenges of the 21st Century and exploit the opportunities that are rendered possible by advanced broadband networks. Since 1995, Palo Alto, in particular, has attempted to promote competition in the delivery of high-quality, low-cost, advanced broadband services to its community, which entities like Comcast and SBC have chided as ill-advised.

On May 8, 1995, the Palo Alto city council appropriated funds to conduct a study to develop an advanced communication system in Palo Alto. Then, on August 5, 1996, in response to requests by many, including competitive local exchange carriers that sought to provide these services in the Palo Alto marketplace with the encouragement and assistance of local government, the Council approved plans to develop a city-owned dark fiber optic ring.⁷ Over the past decade, the public has repeatedly clamored for Palo Alto city government to play a greater

⁵ Palo Alto is entitled to review Comcast's performance triennially. Since Palo Alto initiated its first triennial review in 2003, Comcast has paid in excess of \$145,000 to resolve performance issues.

⁶ See notes 2 and 4

⁷ See City Manager's Reports, CMR:240:95 and CMR:361:96, respectively. Then, companies such as Brooks Fiber Communications Inc. and ICG Communications Inc. expressed their strong interest in promoting the provision of advanced communication services to the Palo Alto community, provided Palo Alto constructed a dark fiber backbone to facilitate these services by third parties.

role in the deployment of alternatives to presently offered broadband services. As yet, no competitive, financially affordable, and technologically advanced state-of-the-art alternatives to the currently offered services by cable modem and DSL providers are perceived to exist. Palo Alto would maintain that there has been no lack of effort on its part to promote the interrelated federal goals of enhanced cable competition and accelerated broadband deployment. Recently, the Palo Alto city council authorized city staff to proceed with the issuance of a request for proposals to solicit the development, construction and operation of a citywide ultra-high speed [minimum 100 megabits per second symmetric service] bandwidth system.⁸ This endeavor, it is hoped, will ultimately spur robust cable competition and accelerate the deployment of one or more ultra-high bandwidth broadband systems in the Palo Alto community.

In summary, the Joint Powers and some of its members have actively sought out competitive cable providers and have not denied any provider the opportunity to provide cable and other related services in their communities.

Timeframe to Consider Competitive Franchise Application

In the FCC's Notice of Proposed Rulemaking, paragraph 21, the Commission has solicited comments on a local cable franchise process that "does not unreasonably impede competitive cable entry." It has specifically inquired about the "maximum timeframes for consideration an application for a competitive franchise." As Palo Alto's experience in separate negotiations with Comcast and RCN would suggest, it would be both difficult and unfair to local franchising authorities and new entrants alike to apply a universal timeframe within which an application for a competitive franchise must be deemed filed and considered. A local franchising authority's franchise process could be fairly evaluated in terms of timeliness and responsiveness with respect to any application for a franchise, provided the information that an authority can request and the information an applicant can provide both reasonably and sufficiently address the applicant's financial, technical and legal qualifications to construct, operate, maintain and repair a competitive cable system and the authority's need to assess those qualifications in light of the extent to which the public health, safety and welfare will be served and the public's need for competitively priced and technologically advanced broadband systems will be addressed. Palo Alto would advocate that the FCC should not adopt any hard and fast rule in regard to any timeframe for consideration of an application for a competitive franchise. Any such timeline should take into account the relatively unique circumstances under which the new entrant and the local franchising authority would come to the table to engage in earnest and forthright negotiations.

Conclusion

The cable franchise process being conducted in southern San Mateo County and northern Santa Clara County, California is (and has been) conducted by the Joint Powers communities in a fair, expeditious, timely and thorough manner. As noted above, the JPA possesses over twenty years of experience in working with cable providers to ensure that local community needs are sufficiently addressed and the business needs of providers are adequately considered.

⁸ See City Manager's Report, CMR:111:06, dated January 17, 2006.

Under the current practices of the JPA, local cable operators are afforded access to the public rights-of-way in a fair and nondiscriminatory manner, to construct and maintain their cable systems consistent with local building and related requirements and the rights of other users, including providers of utility services. These practices and the oversight exercised by the affected local governments in the implementation thereof have been developed to ensure that local community needs are met and that the health, safety and general welfare of local cable and utility customers are protected.

Finally, a local cable franchise permits the community, including the JPA, to address the manner in which a local cable system will be constructed and deployed and the features of desired product and service offerings (e.g., PEG access, I-Nets, and EAS systems) that will be made available to address and satisfy local needs. These factors are equally present for new entrants as for existing operators.

Palo Alto, on behalf of the Joint Powers, respectfully requests that the Federal Communications Commission take no action in this referenced docket that will unduly and unnecessarily interfere with its local agency authority over cable franchising or will impose burdensome requirements that might adversely affect its local franchising process as sanctioned under current federal law in regard to existing cable service providers and new entrants.

Respectfully submitted,

CITY OF PALO ALTO



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